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MORE

“ALARMING DEVELOPMENTS.”

LIFE AND “TIMES IN GROTON:”

OR

ONE WAY FOR LAWYERS AND CLIENTS

TO RAISE THE WIND.

CONTAINING A

REPORT OF A TRIAL IN THE SUPREME JUDICIAL COURT,

HOLDEN

AT CAMBRIDGE, COUNTY OF MIDDLESEX, AND

COMMONWEALTH OF MASSACHUSETTS,

OCTOBER 23d, 24th, and 25th, 1850.

BEFORE HIS HONOR, JUDGE FLETCHER.

GROTON:

PUBLISHED BY THE DEFENDANT.

1850.

U.S. 13644, 35,
L.C. 13280.3 ~~64~~

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TO THE PUBLIC.

THE compiler of these pages offers no apology to the public and his friends, for circulating this account of some "*strange and unusual proceedings*," which he believes owe their origin to his unyielding determination to pursue an upright, fair, and honorable course in the path of his duty, and to abide strictly by his oath as a juror, a magistrate, and a man.

It is not his purpose to unfold in these pages the purposes of his adversaries; or the means they have adopted in the unceasing vigilance they have exhibited, in the devious pursuit of objects and subjects, to aid in the destruction of his reputation, and the conversion of his hard-earned substance.

The defendant denies any participation in much of the loose talk concerning the plaintiffs, which has been spread abroad; nor does he admit that he has uttered all the language ascribed to him by some of these witnesses. He heard reports unfavorable to the reputation of the plaintiffs: and thereupon, in view of the relations of business, amity, and friendship, which subsisted between them, he sent for and had a confidential conversation with Jewett upon the subject. The result must be gathered from the testimony, which, after suitable allowance for lapse of time and other circumstances, abundantly shows that the defendant sought the welfare of the plaintiffs; first by the interview with Jewett, secondly by invoking (confidentially) the aid of his and their neighbors, although without success.

The defendant to this hour deems all the plaintiffs as mere instruments in the hands of heartless and unprincipled demagogues.

The stories of Spaulding and the workmen in the *furnace* of inventive genius, had acquired new and interesting additions. For and during a term of eighteen months after Spaulding saw what he saw, the defendant and Jewett were on business terms, which continued nearly up to the time of the service of the writ, Farnsworth vs. Whiton, which was entered at the April term of the Supreme Judicial Court, A. D. 1849; damages laid at \$3,000. The first case of Jewett and Wife vs. Whiton, was entered at the same term: damages laid at \$3,000. The second case of Jewett and Wife vs. Whiton, was also entered at said April term; damages laid at \$2,000. This is the subject matter to which his adversaries clung, as a last resort, to deprive him of his commission as a Justice of the Peace. And these are the suits at law to which reference is had in a Report of the Honorable Committee of the Senate and House of Representatives, near the close of the sessions of 1849 and 1850.

The case of Farnsworth and Whiton, was tried before his Honor, Theron Metcalf, at the October term, A.D. 1849.

On that trial the defendant was taken by surprise; he was not prepared. The jury, after three hours deliberation, informed the Court that they could not agree. But his Honor urged them, and they eventually compromised a verdict of \$241 against the defendant.* In this suit Jewett was a prominent witness. But his wife, who must have known if the reports were false, although present through the trial, was not called to testify. The actions, Jewett and Wife vs. Whiton, were

* His counsel say that this verdict will be set aside.

continued to the next April session, at which time the defendant appeared, with his witnesses, ready for trial. But the counsel for the plaintiffs (George F. Farley,) appeared without witnesses. After the second day of said appearance, the plaintiff's counsel prayed a continuance of three cases marked for trial, by reason of the sickness of Bradford Russell, Esq., whom he said was unable to attend Court. This his Honor readily granted, and the counsel (Farley) forthwith went away.

This defendant suspecting he might be circumvented, inquired of the Court, by his senior counsel, if his case was or could not be continued for like reasons, as said Russell was of his counsel, and had arranged and prepared the case, and had in his keeping the papers. Whiton also stated to his Honor that he had seen said Russell that morning—one day later than Farley's report—and that he was not any better. His Honor replied that he could do nothing about it until he had seen Mr. Farley. On the subsequent day Whiton again appeared at Court and fortified his preceding account of said Russell's health with the affidavit of his physician. He understood that his Honor decided, that by reason of the peculiar state of the business of the Court, the case of Jewett and Wife vs. Whiton could not be tried at that term. The defendant's witnesses were accordingly discharged and went home on Wednesday, the 24th inst.; and B. F. Butler, Esquire, by his Honor's direction, addressed a notice thereof to George F. Farley, Esquire, which he read on that day in Groton, and thus replied to the bearer:—I wonder if the Court will do that. I guess we shall see.

On the next Monday Farley and the principal plaintiff and his witnesses appeared at Court. On Tuesday at noon the plaintiffs' counsel had a conference with his Honor, and after some sparring by counsel on both

sides, his Honor ordered the defendant to pay Jewett's eleven witnesses for their attendance, and dismissed the parties until the ensuing October term. With the feelings the defendant entertains upon this proceeding, he will not venture a commentary.

The following are the specifications filed in the case by the counsel for the parties respectively.

**MIDDLESEX, ss. Supreme Judicial Court, April Term,
1849. ASHUR JEWETT et al. vs. ELIJAH WHITON.**

The plaintiff in obedience to the order of Court in the above entitled action, will endeavor to prove in support of the general allegation in his said writ:

A conversation had between one Samuel W. Rowe and the defendant, on or about the tenth day of February, 1849, near the stove in the Post Office in said Groton, which was in substance as follows: The said Whiton said that while one Calvin L. Farnsworth was at work at the Cemetery in Groton, in said County, he the said Whiton sent one Spaulding to Jewett's; (meaning the residence of the plaintiff,) that when said Spaulding came back, he the said Spaulding told him the said Whiton, that he saw the said Jewett's wife in his the said Jewett's shop with the said Farnsworth in rather suspicious circumstances; that her hair was tumbled up, and there were shavings on her back; and that said Spaulding on that evening, (meaning on the evening of said conversation) wished to make a complaint against him the said Farnsworth for adultery; and that he the said Whiton told him the said Spaulding that he had better not do it, as there were two of them; (meaning the wife of the said Jewett and the

said Farnsworth) and they would swear him down and get him into a fix that he would not easily get out of; that he the said Whiton talked with one Whiting and one other of said Jewett's hands, upon what the said Spaulding had told him, and that he found it was not new to them, for they had seen enough before to convince them of their guilt, (that is, of the guilt of said Jewett's wife and the plaintiff.) The said Whiton further said, "that that evening he sent for said Jewett to come up and see him, and after moralizing some time to prepare his mind for the unwelcome news, he the said Whiton told him the said Jewett, he must prepare to hear something that would make his heart bleed; that he the said Whiton then told the said Jewett what said Spaulding had seen; that said Jewett instead of being shocked appeared as though it was nothing new to him, and argued that if it were so it was all right; that one argument used by said Jewett was, that he had to work very hard and was not very able bodied, and that his wife was a stout, hearty woman, and if he the said Jewett was not able to supply all her wants, it was right for her to get the balance where she could catch it. That furthermore it was good for her, as her health has been a good deal better since Farnsworth had lived there (meaning at said Jewett's house) than it was before; that he the said Whiton told said Jewett, that such things could not be allowed here, (meaning in said Groton,) and told him that it had become known, and his (the said Jewett's) children would know it; and that he (the said Whiton) asked him (the said Jewett) what respect they would have for their father or mother, after knowing such things; but in spite of all he (the said Whiton) could say, he could not make him (said Jewett) show any feeling upon the subject; that he (said Whiton) told him (said Jewett) that if he had no

feeling upon the subject, that the community must and should be protected; and that Farnsworth (meaning said Calvin L. Farnsworth) must leave, and that there had been a man to him on that day to make a complaint against him the said Farnsworth, and if he the said Farnsworth did not leave, he the said Whiton would entertain the complaint.

G. F. FARLEY,
Attorney for Plaintiff.

Defendant also filed the following Specification of Defence.

MIDDLESEX, ss. *Supreme Judicial Court, April Term, 1850. ASHUR JEWETT AND WIFE, vs. ELIJAH WHITON.*

And now the said Whiton, calling upon and requiring the said Jewett and Wife to prove each and every matter and thing necessary to make out their case, files the following specification and substantive matter of discharge, in avoidance of the action. If the said Jewett and Wife prove the words to have been spoken, or the charges to have been made by the said Whiton, as is alleged in said declaration, the said Whiton in his defence will rely upon the truth of the words spoken, and upon the truth of the charges proved to have been made, and will also rely upon the fact, that the words alleged to have been spoken and charges alleged to have been made, were spoken and made, if spoken and made by said Whiton, without malice, in a lawful and justifiable form and manner, and for the furtherance of justice, and with good, legal, and justifiable ends, and that the same did no manner of harm, injury or damage to the said plaintiffs; reserving to himself the right to

give in evidence under the general issue, any matter that may tend to rebut or disprove the case, which the plaintiffs shall have attempted to make out.

BUTLER & ABBOTT,
Defendant's Attorneys.

The second action of Jewett and Wife, vs. Whiton, was founded on the testimony of Daniel P. Jewett, a brother of the said Ashur Jewett, the plaintiff. The plaintiffs' specification may be inferred from the within contained testimony of the said Daniel. The defendant's specification was a substantive repetition of that in the other case.

The following report of the testimony on the trial of these cases, is copied from the minutes of the counsel for the defendant.

SUPREME JUDICIAL COURT, at Cambridge, Middlesex County, and Commonwealth of Massachusetts. Before his Honor, RICHARD FLETCHER, Oct. 23d, 24th, and 25th, A. D., 1850.

Two actions. ASHUR JEWETT, and AMELIA HIS WIFE, vs. ELIJAH WHITON, Esq., all of Groton, in said County.

His Honor decided that both actions should be tried at the same time by one jury. George F. Farley and J. Q. A. Griffin, counsel for plaintiffs. B. F. Butler, J. G. Abbott, and B. Russell, Esquires, counsel for defendant.

The case for the plaintiffs was ably opened by Mr.

Griffin. To avoid repetition, the reader will understand that all the witnesses introduced were duly sworn.

Samuel W. Rowe. I am a carpenter. In November, 1849, I had a conversation with the defendant in the Post Office in Groton, near the stove. Something was said about Jewett; he had had that day a lawsuit with another; I began the conversation; I said I was sorry to see Jewett engaged in such dirty business; Whiton said he was sorry, he had formerly entertained kind feelings towards him, but something particular had occurred which altered them.

I told him I knew it from hints of what had occurred at the cemetery. He then went on to tell me, perhaps by my request; he said when they were building the cemetery, he sent Spaulding to Jewett's house, and he came back and told him he found Jewett's wife and Farnsworth in suspicious circumstances, her hair was tumbled and shavings were on her back; that Spaulding wished to enter a complaint, he said no! that there were two of them and they would swear him down. He sent for Jewett that night, and communed with him on the uncertainty of events, and that he said he had something to tell him, that he must be prepared to hear something to make his heart bleed. He then told him what Spaulding saw. Jewett did not appear to feel—he tried to make Jewett feel, but could not. Jewett told him if it was so, it was nobody's business. He said his wife's health was better since Farnsworth had been there, that he (Jewett) was feeble, and if he was not able to supply all her wants, it was right for her to get the rest where she could. He (Whiton) told Jewett that it must not be so, the community must be protected; that there had been a complaint made to him, and unless Farnsworth left, he should entertain the complaint. He (Whiton) told him his children would know

it, and asked him what respect they would feel for their father and mother. He said he could not make Jewett feel anything on the subject.

Cross-examined by B. F. Butler, Esquire. This conversation was immediately after the time of Jewett's trial with G. W. Lewis, before J. S. Adams, Esquire. Whiton said he had always felt friendly to Jewett, and still wished him well. Whiton hired Jewett to do his work. I have heard Whiton's assistance to Jewett spoken of. I now give the substance, (of the conversation) not the words. The commencement of our conversation was by expression of sorrow for Jewett's course. There was no expression of ill-feeling towards Jewett. No other person was within earshot. We stood close by Lothrop; we talked in a moderate tone of voice, within two or three feet of Lothrop, through a window. I did not understand that the conversation was confidential. I told Mr. Whiton I had heard some hints before this conversation, about Jewett's wife. I had heard my men say that they were so constituted they could not help it. I think there were other expressions; I may have heard about the shavings before.

Samuel H. Furness. I worked for Rowe in 1847, on the cemetery in Groton. I saw Whiton there, and had a conversation with him. He asked me to fix some joints; he said a very singular circumstance came to his knowledge within a day or two; he said there had been two or three witnesses examined, he did not wish to say anything about it, it would be out in a few days. He said Spaulding was sent to Jewett's shop by Jewett's men after tools; he (Spaulding) got out of the wagon, went in quick, and saw Farnsworth with a woman in his arms. Spaulding came to the cemetery and inquired who Jewett's maid was. Phillips said that was no new thing; Phillips said that was Jewett's wife.

Captain (Leonard) Whiting also said so. Whiton questioned the hands whether Jewett knew it. He (Whiton) took Jewett one side, and told him he was about to tell something that would make him feel bad. Jewett said, phoh ! that is child's play ; they are so constituted they can't help it. He said you might go through the Commonwealth and not find another person who would do the same. He asked me what I should do about it if it was my wife. I told him the partition must be plastering.

Cross-examination. I told the story to Ashur, after I hinted it before to George May, long after we had finished work on the cemetery. I told it then to Carr. I don't recollect of telling it to any one else. I told it to Mr. Bancroft, one of the counsel here in the court house. He (Whiton) said first, a very singular circumstance has come to my knowledge within a few days. He then said two or three witnesses had been examined, it would be out in a few days, he was not agoing to call names. He then went off a short time ; he then came back ; he said Jewett's hands requested Whiton [Spaulding] to bring home some tools from Jewett's hands. He said he [Whiton] sent Spaulding for the tools ; he said Spaulding stepped out of the shop to give Farnsworth and the woman a chance to recover themselves. Jewett's hands said Jewett had no maid, and from Spaulding's description they, the hands, said it was Jewett's wife, that it was no new thing ; that he, Whiton, questioned the hands and said he thought Jewett, if he did not know it, ought to know it. He [Whiton] said he told Jewett, what Spaulding and the hands said, and Jewett didn't seem to be provoked, and said, is that all ! mere children's play. He asked what I should do. I said I should divide the house. He said he never heard of such a thing. I have heard the con-

versation about his feeling bad so many times, that I put in *feeling bad* on that account. I might have got this expression from testimony on the stand. Whiton did not tell me that Spaulding boarded with him. Mrs. Jewett was present in Court at the other trial, and was not put on to the stand. I never expressed feeling against Mr. Whiton; not hostile to him. I am neither for nor against him. I did not attempt to throw ridicule upon him. I had no *very* hostile feelings against him.

George Brigham. I know the parties—I had a conversation with Jewett [Whiton] in the fall of 1847; we were riding to the cemetery. He said he had a quarrel with Farnsworth; said he was a bad fellow; he had had to do with Jewett's wife; he said it is with Ashur's wife; he said he could prove it by workmen; he said he felt it his duty to let Jewett know it; he said he prepared him for it, and told him it may break your heart; he [Jewett] laughed in his face, and said if they are born to love each other what can you do. He said Jewett was satisfied.

Cross Examination. I mentioned the boards put on wrong at the cemetery to Whiton, and he said he had difficulty about that matter with Farnsworth. I asked him how do you know it, (meaning about Jewett's wife.) He said I found it out by Jewett's workmen. Mr. Whiton had treated me ill about a fence. A decent respect for the memory of the virtuous dead, forbids a record of the next, and witness ended.

Daniel P. Jewett. I reside in Shirley. I had a conversation in February, 1848, at his house. He said that Farnsworth and Ashur Jewett's wife, had criminal intercourse together; he asked if I had heard how Ashur's wife and Farnsworth had been cohabiting together; he said they had criminal intercourse together in the daylight, and that he could prove it. He said he

sent for Ashur and told him he had terrible news; he told him Spaulding saw them together.

Spaulding thought it was Jewett's maid at first, but from description of the hands, he found it was Jewett's wife. Ashur Jewett said, don't you know some people are so constituted that they cannot help loving each other. [Whiton said] he was thunderstruck, and said it could not be allowed, and he must send Farnsworth away. He had only told it to two or three of Ashur Jewett's friends. I saw Whiton the January before, at my house, and he said, I hope your wife is more honest than Ashur's wife, if I was going to leave her alone; and I asked what it meant. He said he would tell it another time.

Cross Examination. He asked me if I knew how Ashur Jewett's wife and Farnsworth had been conducting. We were alone, I think. I said no. He said I will tell you. I can't tell whether Mr. Smith was there or not. Smith was not there when the story was told.

I was there three or four times. He [Whiton] said they had carnal intercourse together in daylight, and he could prove it. He then said three complaints had been entered.

He sent for Ashur to come to see him, and told him he had some bad news. *I first told this story to Mr. Bancroft.* I never told it to any one but my wife before Court. My brother's [Ashur Jewett's] wife was here at the last trial. She was not examined as a witness.

I have had difficulty with Whiton. *I never told it [this story] to anybody until after I was summoned.* I never asked my brother [Ashur Jewett] about it. After that conversation with Whiton; Ashur, Whiton, and I were together doing business; I said nothing about it. I got my brother there to give his note for me to

Whiton. I cannot tell the reason why I did not mention it; had no ill feelings. I talked with brother William and *told part of it*; can't tell what part, nor can I tell why; I did not tell the whole; I did not tell the whole in substance. I could not tell what my wife and brother William and his wife said when I *told this story*. I could not tell when, where, or what was said. I have no recollection of telling anything to brother William. I wont swear to it. I said it was talked about. I did not say anything to Whiton in reply to this conversation. I have had difficulty with Whiton. He got me indicted.

Here the counsel for the plaintiffs submits his case.

B. F. Butler, Esquire, opened the defence in a brief, comprehensive, and able exposition of the matter at issue, and of the defence set up by the defendant.

Witnesses called for the defence.

Miss Phebe Ann Kendall. I have lived in Groton many years. I have lived with Jewett's family. I now live at Mr. Dodge's.

I have known Mrs. Jewett ten or twelve years. I lived at Jewett's in the winter of 1847; went there thanksgiving day. I left there in March, in 1848. Farnsworth lived there when I first went; was there also before. In 1847, in the fall, I went to Lowell with Mrs. Jewett. She was purchasing a shawl. She said she did not know but people would think her extravagant, but it did not come out of Jewett. I asked who? Farnsworth. She nodded assent. She bought a book for Farnsworth. She put his name in it. She said she bought it for Farnsworth. Before I went to live with Mrs. Jewett, I knew of Mr. Farnsworth and Mrs.

Jewett's spending time together. I was there occasionally. They were sometimes in the parlor; sometimes in the sitting room, sometimes a great while, sometimes a short time, in the daytime. Mr. Jewett often came into the house when they were together. Before I came to live there, I saw Farnsworth's arm around her waist. They were sitting in the sitting room, children were there. Once I went into the room from the kitchen, they were standing near the table. After I went there, I saw Mrs. Jewett sitting in his [Farnsworth's] lap in the kitchen. There was other seats in the room; no one there but myself; they set there five minutes. She said I did not look good natured. I did not see his hands. This was the last of the winter—about the first of March. After this, Farnsworth was at Shirley, and Jewett came home from Shirley; she [Mrs. Jewett] asked him, what news from Shirley? He said Mr. Kezar told him he had seen Calvin Farnsworth, and he told him he would give up his claim at Mr. Jewett's for a dollar. He said he saw him waiting on a girl the night before. I can't say what she then said,—she began to cry,—she told Mr. Jewett if he did not carry her over to see Farnsworth about it that night she would walk over; and Mr. Jewett persuaded her to stay till the next day, and he would carry her over the next day. The next day they started. They said they were going to Shirley to see Farnsworth. They came back, and I asked her what luck? and she said it was his niece whom he had gallanted home from a spelling school, and that Farnsworth would call over and see her in a few days. Farnsworth came in a few days; he staid one night; I don't know if they were alone together. Miss Jenkins was there often when Mrs. Jewett and Farnsworth spent time alone together, while I was there. Sometimes Jewett was there and some-

times not. Mrs. Jewett went to Farnsworth's room to call him to breakfast; the folks were all at home. She said she was going to Farnsworth's room,—she was gone two or three minutes. [Question about a singing school.] I remember offering to stay at home from singing-school to take care of Mrs. Jewett. She said, no! Calvin Farnsworth would take care of her. Her husband went to the singing school. When we came back, Mrs. Jewett was sitting in the bed, and Calvin Farnsworth in a chair at a proper distance. We were gone two or three hours. I talked with Mrs. Jewett several times about her conduct after I went away. I told her it was not right for her to conduct so. She said she should do as she pleased for all me. She did not deny their intimacy. I agreed to stay my time—from fall till spring. Mrs. Jewett told me that there were reports [about her and Farnsworth.] I had heard reports.

Cross-examined by Geo. F. Farley, Esquire. I cannot tell how early I heard reports. I told Mrs. Jewett what some one had told me. She [Mrs. J.] spoke to me about reports *before* and after the work on the cemetery. She told me how she liked Mr. Farnsworth. Mr. Farnsworth had lived there. The first I knew about it, she told me. She said she wished to tell me, for fear I should see things, and she did not want I should tell of them. That was in the fall of the year before I went there to live. She said she had something to tell me. She said she liked Farnsworth, and he liked her. I understood it referred to improper conduct, which I was requested to conceal. I told her I would not tell of it.

To the question by plaintiff's counsel—Did you testify to this before?—the witness replied, you did not ask me about this before. Mrs. Jewett cried, and said Farn-

worth might go, if *she* could go to the ball with him. We had some hard words about the ball. I did not think of going.

The Monday before the ball, Farnsworth went in and saw Mrs. Jewett; he came out. I went in and saw her crying. She said Farnsworth asked her if I would go to the ball with him, if he asked me. They spent most of the time together from Thursday till Saturday on one occasion, going in after dinner and staying alone till supper time, sitting near together. Jewett knew they were together. They were there nearly as long the next forenoon. She would often ask me not to tell. Jewett said to her; don't let the men see you go to Farnsworth's room. She said don't you think I know enough, and then she asked me not to tell. Farnsworth went out of the front door, and came in at the back door. Mr. Jewett came in before Mrs. Jewett left. Farnsworth had her in his lap. Mr. Farnsworth was not there present at the time of the book being purchased. I told Mrs. Jewett there was reports about her being too intimate with Farnsworth. She said it was nobody's business. There was a bed in her sitting-room part of the time.

Joel D. Spanlding. I live in Groton, and worked for Whiton when they were building the cemetery. I went down to Jewett's shop for tools and stuff. I drove up to the gate and started on the run to the shop-door, which was two or three rods off. I could not see from the shop-door to the wagon. I saw a man and woman sitting on the end of the tool-chest. The hands of the man were around the woman; they did not notice me when I first went in. I then went out—then came back; made a noise, and the woman got up and went out. I thought they would not want me to see them there. The woman was Mrs. Jewett. Farnsworth sat

and hung his head down, and then got up and poked among the shavings, as if he had lost something. Next day I asked him what ailed the woman ; he said she had her jaw hurt by having a tooth extracted. I said to him you are in a pretty plight to sit there hugging a married woman. He said that's nothing, I've been nearer. I drove back to Mr. Whiton's. I told him I caught Farnsworth in a pretty plight down there, hugging Ashur Jewett's maid. He asked how she looked, and I described her. We got up to the cemetery after dinner. Capt. Leonard Whiting was there ; and Phillips was there. I asked who that maid was. Phillips said that was no new thing ; he said, speak out ! I told the story [what I saw]—he said that's the wife ; that's nothing ; I've seen more. Leonard Whiting said he went into a room without a light, and he found Farnsworth and the wife there, with his arm about her waist. He got a light and went in again. Phillips said it was nothing uncommon. The hands [at the cemetery] spoke of this intimacy as a thing known. I saw Jewett up there at Whiton's that night. There was something said about prosecuting by some one. Whiton said it would not do *for you* to swear ; there would be two against one.

Cross-examined by Mr. Farley. I don't think I met any person when going to Jewett's. Can't say that I *proposed to prosecute or that I did not*. I did not tell him that her hair was *tumbled*, or shavings on her back. The lady [on the chest] went out of the back door. I think I did not make a complaint.

James F. Stone. I live in Groton. I lived last fall at Ashby, I was not a witness at Court on the last trial. I have known the plaintiff, Ashur Jewett, five or six years, or more. I worked for Jewett one or two months in the spring of 1848. I began in April and left

off in June. I went out in the woods with him after wood. Jewett said Whiton had reported a story about his wife; that Spaulding had told him about his wife and Farnsworth. He [Jewett] said he did not know but what his wife had had too much of Farnsworth, and that was what made her sick. He said if it was so, what was it to Whiton? I said nothing.

Cross-examined. I was summond before [to the first trial.] I told the officer I knew nothing about the case. I live in Groton now—[lived in Ashby then.] I did not wish to come. I was butchering, and my man with me was sick. I made an affidavit afterwards. Mr. Needham reminded me of my story. I had told it to my father, and also to Mr. Lewis.

Miss Mary Ann Page Jenkins. I know the plaintiff. I went there to live from my home in Shirley, in the fall of 1846—the fore part of the fall. I left in 1847, at thanksgiving. Miss Kendall came there a week before I left. Farnsworth came there in the fall of 1846; he staid there while I was there, and left when he was sick, three or four weeks. I saw intimacy between Jewett's wife and Farnsworth several times while I was there. They went out and staid in a room alone. He would come in from his work and stay half an hour to an hour, till Phillips came in and asked for Calvin. He was alone with Jewett's wife. I saw his arm around her neck. I saw his arm around her waist a great many times. I saw his hands round her neck in the sitting room. No one else was there, and they were sitting near each other. I have seen his arm around her waist a great many times. He carried her to ride. I saw him sitting on the foot of her bed. She was in it. In the evening I went into the room and found him sitting there; she was lying in bed; he did not get up. Mrs. Jewett said we might go to the singing school.

I and Miss Kendall offered to stay with her. She said Farnsworth would stay. [We returned.] I found him sitting at the head of her bed, and she in it. It was where she slept; she had gone to bed for the night. When we went away there was nobody at home, except she and Farnsworth. She [once] spoke of Mr. Jewett's health; she said she did not think he would live long. I said you will have Calvin Farnsworth; that she liked him and he liked her. She laughed and went into the bed-room. She said she wanted tea at five o'clock, or not at all. It must be five minutes before or after [five] that I told her it was ready. We waited a while, then we went to Eber Woods's,—about $\frac{1}{2}$ of a mile; we walked back into the yard before she came out. The children were in the door-yard. [The oldest is] seven or eight years old. Mrs. Jewett one day said she had something to tell me. She said Whiton had been entering a complaint about her and Farnsworth; and Jewett answered him, he wished he would tell him some news; she said that Whiton got his answer. I was there when Mrs. Jewett said Spaulding came. Mrs. Jewett came into the house in a great hurry. I asked her what was the matter. She said Spaulding came into the shop; she was on one side of the tool-chest and Farnsworth on the other; that his arms were not around her as they had been sometimes. She said she did not want me to say anything about it. I was there when Mrs. Jewett went to Lowell and bought a shawl. Miss Kendall went with her. A book was brought home and put away, with Calvin's name in it. It was in her [Mrs. Jewett's] bureau. I do not recollect whether Calvin was at home or not. Mr. Jewett passed through the room, when Farnsworth's arm was round her waist. I have seen them in the buttery together. I have heard Mrs. Jewett say she liked Farnsworth as a boarder.

Cross-examined. He whispered to her in the buttery. I have stated some things now which I did not state at Farnsworth's trial. I did not state it then because I was not asked particularly about them, and I did not think of them then. I have not talked with Mr. Whiton or anybody about what I knew, since the last trial, until I came here to Court, excepting I asked some one if it would do to state things at the next trial which I had forgotten at the other trial. I was not examined by Mr. Russell, [Mr. Whiton's counsel] before the other trial. I have been examined by Mr. Russell since I came to Court this time, and disclosed these other facts to him, but not to any one else. I do not now recollect any other acts of intimacy between Mrs. Jewett and Farnsworth.

Jonas Eaton, jr. I have lived in Groton ever since I was born, except a short time I was at Boston. I am cousin to Amelia Jewett, the plaintiff's wife. She said there never would have been any trouble, if it had not been for one man, between her husband and his wife. This conversation was last November. Mr. Whiton had ever been friendly until this time. She said if it had not been for one man, this suit would never have been brought.

Witnesses called for the plaintiffs.

Oliver Howe. I have had conversation with Spaulding. I had talk with him; Whiton drove by; he said there goes friend Whiton; he then stated the story similarly to his statement here. I have known Spaulding eight or ten years. I know his reputation for truth is not so good as men in general.

Cross-examined by defendant's counsel. I was not called before at the other trial to impeach his character. There was not any witness called. I was summoned then as a witness. Spaulding is a poor man, and don't fulfil his promises to pay his debts.

Abel Stone. I live in Groton. In 1847, in July or August, I saw Spaulding at Jewett's. I called at Jewett's shop. Farnsworth was at the bench, and Mrs. Jewett was on the tool-chest. Mrs. Jewett had a white handkerchief on her head.

Cross-examination by defendant's counsel. *I met Spaulding going to Groton, twenty-five or thirty rods from Jewett's. I was in the shop a minute, perhaps, before I met Spaulding.*

Walter Kezar. I live in New Salem. I lived in Groton in 1847 and 1848. I went from the south part of Groton to the middle of Groton. I went to the plaintiffs; saw Miss Kendall and Mrs. Jewett. I staid one night. Mr. and Mrs. Jewett did not go away. Miss Kendall asked me if I had been to Shirley. I told her I had, and had seen Mr. Farnsworth, and seen him with another girl, and that Farnsworth said he would give up his claim on her for a dollar. Mrs. Jewett was present at the conversation, and did not cry. She said nothing about going to Shirley. She did not go there the next day. I have known Jewett and Spaulding eight or ten years. I should not call Spaulding's reputation good. I noticed no impropriety with Mrs. Jewett and Farnsworth. Farnsworth lived there half the time while I was there. I was there three or four years. I have seen them alone together.

Cross-examination by defendant's counsel. Whiton summoned me at the other trial at a great expense. I have advised, in substance, that Ann Kendall should be summoned.

Questioned by B. F. Butler, Esq. *Did or not Mr. Whiton meet you in Boston, and did you or not advise him to summon you, and did you or not tell him that you knew a great deal about it, and that Ann Kendall knew all you knew, and a great deal more, and did you or not advise him to summon her?*

Answer. — No, I did not. Whiton asked me who lived with Jewett in 1848. I never had any other conversation with Mr. Whiton till I was summoned.

Charles Butler. I live in Groton. I have known Joel Spaulding three years this month. His general reputation for truth is bad.

Cross-examination. Mr. Hollingsworth first spoke of it. There was a lawsuit between him and Hollingsworth. I next heard Mr. Oliver Howe speak of it.

Luther F. Potter. I keep store in Groton; have known Joel Spaulding seven or eight years; his general reputation for truth and veracity is bad.

Calvin L. Farnsworth. I live in Shirley. I have lived with Mr. Jewett. I heard Misses Kendall and Jenkins testify. I have no recollection of remaining with Mrs. Jewett while the rest went to singing school. Mrs. Jewett and Miss Kendall were going to Lowell; they were speaking of buying a shawl, and I said buy me something. Afterwards Jewett gave me a book — not on the same day. I never received a book from Mrs. Jewett. I had nothing to do with the shawl. I have no recollection of my arm being about her waist. I have no recollection of my arm being about her neck. I was at work in the shop that day [when] Spaulding drove up, and said Jewett sent him down to get some stuff. Mrs. Jewett was there sitting on the chest; I was at the bench. The children were there; Abel Stone was there *previous*. I had no arm about her waist there — I swear I have no recollection of it. I have no recollection that she ever sat in my lap. Mr. and Mrs. Jewett wanted to go — they all went together. I don't recollect waiting for supper, [as described by Miss Jenkins.] I don't recollect Mrs. Jewett's calling me to breakfast. There was no difference in the treatment of me from others by Mrs. Jewett. Some were in the sitting-

room more than others. I sung with Mrs. Jewett. I have sat beside her and stood beside her, when she was singing. I don't think she ever did sit in my lap. Miss Kendall gave me a dollar not to plague her about Ervine Brentnall. I think she knew it. I have no doubt I went into the buttery with Mrs. Jewett. There was nothing improper in my treatment of Mrs. Jewett.

Cross-examination. I never had criminal intercourse with Mrs. Jewett. Never gave any _____. I would laugh and joke it off the best way I could. I never gave any one to understand that I had been a damned sight nearer [to her] than sitting beside her. [Witness describes by motions, the size of the book — say 8 by 5 inches,] morocco binding, with gilt edges; cannot tell the title, nor the author, nor the subject — not one line of it. There was poetry in it. I think there was not pictures in it. The book is at Shirley. I did not own or deny that I had any intimacy with her to Phillips. I think I was advised at the first trial not to call Mrs. Jewett.

Asa T. Lawrence. I was employed by Mr. Whiton to summon witnesses at the first trial. I summoned James F. Stone. Stone said he did not know anything about the case, and my instructions were not to summon him. I summoned Kezar.

William P. Mills. Called for the defence. I have lived in Shirley eight or ten years. I know Calvin L. Farnsworth. I saw him after he had been to Groton. Farnsworth said there was a man came into the room, [at Groton,] and caught him on the tool-chest with Jewett's wife. He asked, that's pretty, Cal! And Farnsworth said he answered, I have been a damned sight nearer. There was a number of hands there present. He said he could do just as he pleased with Jewett; that Jewett was afraid of him; said he was as good as them that talked about him; he said, dam'd

likely he could do anything when the children were about there. [Witness also related a story, told him by Farnsworth, of his practising an imposition upon Jewett about some work.]

George Kilburn. I live in Shirley. I know Calvin Farnsworth. I was speaking of a good time I had at a ball. Farnsworth said he had first rate times at Groton; that Mrs. Jewett used to come out and sit on the tool-chest. I asked him why he did not chance her. He said he had been a dam'd sight nearer to her than that. Chance means sexual intercourse. He was frequently talking about the woman; it all amounted to the same thing.

Cross-examination. I took it he was a-joking.

Welcome Lothrop. I know Joel Spaulding; his reputation for truth is not so good as some.

Phebe Ann Kendall called again by defendant, and said:— She did not wish to change her testimony, but wished to explain in relation to something to which Walter Kezar had testified. She said Jewett came home from Shirley, between eleven and twelve o'clock in the forenoon; he came alone; he came into the house and staid a short time. Mrs. Jewett asked him what news at Shirley? He said he had seen Walter Kezar, who said he had seen Farnsworth waiting upon a girl; and Kezar said Farnsworth said he would give up his claim at Jewett's for a dollar; and then Mrs. Jewett burst into tears, and said that unless Jewett would carry her over, she would go over to Shirley a-foot that night, and look into it; and Jewett told her if she would be quiet he would carry her over the next day to see Farnsworth. Mr. Jewett then went off; the family went to dinner. In the afternoon Mr. Jewett came home with Walter Kezar and Mr. Johnson. Jewett and Johnson went away; Kezar came into the room and talked with Mrs. Jewett about Calvin Farnsworth's waiting upon

the girl ; and he and Mrs. Jewett endeavored to find out who she was by Kezar's description, and I joined with them; but no such conversation took place between Kezar and I, as he has testified to. Kezar went off and did not stay there that night. The next day Mr. Jewett and his wife started for Shirley to see Farnsworth, as I have already stated ; and while they were gone Kezar came there, and I did not tell him where Jewett and his wife were. He went off, and in a few days afterwards came there again and staid over night, and Mr. Jewett went to Boston.

Mary Ann Page Jenkins — called again by defendant. She said she did not wish to change her testimony.

The learned counsel for the defendant (J. G. Abbott, Esq.,) presented to the jury, by clear and forcible language, all the facts and circumstances and the testimony in the case. The mysterious book was the only fact which puzzled his ingenuity. To divine the contents of those sybbelline leaves, was, perhaps, as far beyond his comprehension, as that of the sworn proprietor. He sought in his mind's eye, from the witness's description of the cover, the gilding, the *poetry* — of the thing itself — but without success. The Court adjourned until the next morning. After a brief recapitulation of the testimony, Mr. Abbott opened his argument upon the merits of the case, and from the overflowings of his kind heart, and the depth of his strong mind, emanated a forcible, eloquent, and convincing appeal in behalf of his client. He was followed by G. F. Farley, Esquire, the astute, skilful, and learned counsel for the plaintiffs, who "rarely fails to make his client's case his own." He taxed the powers of his strong mind, and exhibited his superior tact and talent, in able illustrations and urgent appeals to the jury in the plaintiffs' behalf.

His Honor conducted the trial, and addressed the jury in a manner comporting with the well known purity and dignity of his character. He vindicated the course of strict justice. He laid down the rules of evidence and the law in the case, by a clear and lucid expose of its parts and bearings on the whole subject. He collated and compared the evidence in his own masterly manner; and by apt illustrations, exhibited the proximate relations of cause and effect, pertinent to the evidence and the issue; and the class of actions and language, necessary to constitute the offences, charged by the defendant and plaintiffs upon each other. One party had done and performed certain acts, which, by implication, might be deemed and taken to be criminal. The other party had published those acts, (if the witnesses are believed) by the use of language, which, also by implication, the plaintiffs deem to be slanderous. It was the province of the jury to decide the matter at issue between the parties, according to their estimate of the ulterior intentions and motives of the defendant and the plaintiffs, and the effect of the evidence upon their minds.

His Honor occupied more than one hour in the examination of the whole subject matter; and it became evident to all, that he "was of purer eyes" than to behold, without deep concern, such acts as were described by some of these witnesses.

Late in the afternoon, the jury retired to deliberate upon the subject. They were out all night, and agreed on a compromised verdict after 9 o'clock the next morning, against the defendant in the first action, of 150 dollars damage; in the other action the defendant is discharged.

To this verdict the defendant, his friends and counsel will make no objection. Jurors and other men

honestly differ in their estimate, and a friendly compromise on a small verdict is vastly better than continual litigation; but a potential public opinion, untrammelled by the indispensable and arbitrary rules of law and evidence, will review and decide upon the matter, and not make a sixpenny toyshop of the human character. There is not any toleration among just men for any traffic on the road to ruin, nor toll-houses to levy contributions upon any man who will arrest the mistaken traveller on the highway to that human degradation described by some of these witnesses.

The testimony of the witnesses generally agreed with that eliminated in the previous trial of Farnsworth vs. Whiton, with some exceptions. The personal matters to which Mr. Brigham testified, especially the fence, deserves a passing notice. Whiton conveyed to Brigham a strip of land between their respective home-lots in Groton, October 18th, 1834, by deed; in which is a specific clause, describing their divisional line for fencing, a part whereof is in the words following, to wit: "And it is agreed that the said Whiton, his heirs and assigns, shall forever support and maintain a *legal fence* on the divisional line, between his land and that of said Brigham, from," &c.; and then for the first time in the knowledge of said Whiton, and since Farnsworth's and Jewett's writs were served on him, the said Brigham demands and claims, that Whiton contracted in 1834 to build a picket fence on his own part of that line, instead of the "legal" rail fence which both parties have always alike supported on their respective parts of the line. Now by a reference to the records for the County of Middlesex, which cannot be supposed to lie, the witness may find the truth of the whole matter, and thereby learn to estimate the utility of a *ghostly* threat. The attentive reader will find how

well the testimony of Joel Spaulding was sustained by other witnesses ; and then he may wander far into the regions of conjecture to find the apology introduced by the plaintiffs' counsel for his attack upon this " poor unfortunate man."

The defendant's version of Kezar's and Furnace's testimony, may be inferred from the questions put to them by his counsel, on cross-examination, and the hypothesis claimed for the defendant, by the learned counsel, in the opening of the defence, in relation to Rowe's testimony about the shavings and hair ; that his workmen having heard and ranged devious changes upon Spaulding's story in Rowe's hearing, he might after a lapse of time, honestly but unwittingly and unjustly, ascribe it to the defendant. For he testified, " I think I may have heard about the shavings before ;" and the testimony of Welcome Lothrop, in the first trial, viz : that he was present in the Post Office at the time stated by Rowe, but did not hear any such conversation. He said, on cross-examination, that it was possible it might have occurred without his notice. This was forgotten until it was too late to call him.

The second action, depending wholly on the evidence of Daniel P. Jewett, had such a precarious foundation, as the testimony elaborated sufficiently indicates. Capt. Leonard Whiting was a witness on the former trial ; first called by the plaintiffs, and his testimony is repeated by Spaulding on this trial, perhaps with a mistaken addition. The defendant sought for Whiting with a summons, but he was absent.

Caleb Sylvester was also a witness on the former trial, and testified to a conversation with Farnsworth, at Shirley, agreeing generally in time, place, and circumstances, with the stories related by Kilburn and Mills. He was absent, and could not be found in season for the trial.

The defendant cannot find adequate language to express his gratitude for the kindness and impartiality of his Honor who held the balances of justice. The civil and moral atmosphere of this court room, contrasted with that of the first trial, to which reference has been made, dissipated the fears, enlarged the hopes, and impressed the mind of this defendant and all others present, with renewed sentiments of esteem and regard for the laws and the administration of justice; which, although sometimes perverted by artful and designing men and wily counsel, generally exert a healthy influence upon the rights of men.

To all his esteemed counsellors, whose indefatigable industry, laborious attention, and searching scrutiny, whose powerful arguments and array of facts and circumstances, made such indelible impressions upon the plaintiffs' senior attorney, that in his reply he labored long to elevate his theme and excite his well-known power of language and eloquence. To his neighbors and friends, who have clean hands and stout hearts in the cause of moral reform, the defendant appeals with confidence of their good opinion in the purity of his motives and the justice of his cause. For the timid, the *very cautious* and wary, who have approved his acts, but deserted him in the hour of difficulty and danger, the defendant wishes they may attain a more desirable influence over their own hearts, their hopes and fears.

Our beautiful village may yet contain combinations to strengthen the hands of the intemperate, libidinous, cruel, and profane. Our precinct may be contaminated with concupiscence in high and low places. Litigation may continue to undermine the peace and happiness of the community, by its fearful inroads into our property and privileges; by its unprincipled and audacious levies upon our substance; by its potent example in the une-

qual division of the products of human industry; and above all, by its baneful influence upon the morals, the character of men for truth and veracity. Yet we may not despair.

Fifteen actions for slander have been pending in our little community since the last April term of the Supreme Judicial Court. Ten of these have not been entered on the docket, as a settlement has been effected by the parties. The amount of damages claimed, in all these cases, is about \$50,000. A fearful engine this, to be wielded by any man, who may chance to obtain the title of Attorney at Law. A golden privilege* which demands the immediate attention of a Legislature.

The amount of litigation by minor suits, in Groton and its vicinity, is incredible. We suffer in this respect, by comparison with almost any other town in this Commonwealth. Suits are brought upon frivolous and false pretexts, quarrels are thereby engendered, bitter animosities and strife are the legitimate fruits. Society is parcelled and divided into clans; our institutions for mutual improvement are inactive; and strangers try to teach us for money, what we should learn by observation, study, reflection, and self-cultivation. Alternate and fitful professions of love and hatred for the same cause, the same principles, and the same men, are among the peculiar characteristics of our day and generation. Dire opposition of some party or clan, to almost every conceivable project entertained apart by others, is the inseparable concomitant. This blind zeal and suicidal folly has driven from our village men of extraordinary talents, energy, enterprise, wealth, and consideration;

* A considerate man has said, *pettifogging attorneys, corrupt clients, and lying witnesses will increase and multiply by its temptations.*

and thereby reduced the former activity, and destroyed the prospective manufacturing industry of the place.

To the public this defendant appeals. He has been reviled, abused, and persecuted, in these and other matters not herein mentioned, by the same lawless and vindictive combination who have figured in the preceding cases. They have endeavored to bias legislative action and judicial decisions, by premature and libellous publications in the penny papers; and wickedly prevented a reply, by imposing on the editors without a shadow of authority, a name prominent in the affections of the people; and by other overt acts outraged the decencies and civilities of social life. But above all has the *interested* counsel for the plaintiffs, in the public thoroughfares and otherwise, by his invidious remarks and insulting inuendoes, sought to add poignancy to the grief, and acuteness to that suffering; which by these persecutions, the delicate health of the excellent and unoffending partner of the defendant's hopes and fears has experienced. A vile work! which his meanest satellites could scarcely be induced to imitate.

The defendant would say to the plaintiffs, that you have compelled him to this unwelcome task; and this defence and this publication. By the peculiar operation of an imperative law of this Commonwealth, you and Farnsworth have had the fearful advantage of testifying alternately against him, while he is compelled by the same rule of law to be mute. He would now earnestly commend you and some of your witnesses to a keener-recollection of that amity and friendship; of those confidential conversations, and other strange matter about which you have *testified something*, and of which he cannot freely speak, because he might again become obnoxious to the charge of slander.

Finally, he would recommend to all these demagogues and meddlers with everybody's business, some honorable industrial pursuit, which he knows, by an experience of forty years, is vastly more productive of peace, happiness, and plenty, than breeding factions and hatching lawsuits.

ELIJAH WHITON.

Names of the Jurors sworn to try the issue.

Foreman, Nehemiah Ball, Concord; David Bradt, Lowell; Aaron Brigham, Marlborough; Leonard Bullard, Sherburne; Lowell Clafin, Hopkinton; Jacob Cushing, Sherburne; George H. Davies, Cambridge; Joel Edmunds, Framingham; Nathaniel Farmer, Lowell; D. Bucklin Fitz, Holliston; Ebenezer Francis, Cambridge; Elihu Cutler, Holliston.



